

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)

)
Amendment of Parts 1, 2, and)
21 of the Commission's Rules)
Governing the Use of)
Frequencies in the 2.1 and)
2.5 GHz Bands)
_____)

PR Docket No. 92-80
RM 7909

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To: The Commission

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JUN 29 1992

Federal Communications Commission
Office of the Secretary

JOINT COMMENTS ON NOTICE OF PROPOSED RULE MAKING

INDIANA HIGHER EDUCATION
TELECOMMUNICATION SYSTEM,

NORTHEASTERN UNIVERSITY, and

TRANS VIDEO COMMUNICATIONS, INC.

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SUMMARY

Indiana Higher Education Telecommunication System, Northeastern University, and Trans Video Communications, Inc., licensees of ITFS stations in Indiana, Boston, and Brooklyn, respectively, submit these comments in opposition to two major proposals in the Commission's Notice of Proposed Rule Making with regard to processing of MDS applications.

The proposed changes to the MDS rules would seriously impair the ability of ITFS licensees to provide instructional programming to the communities they serve and to plan for any expansion of their systems to provide for future educational needs. Such action would be detrimental to ITFS and inconsistent with the education policies of the President and Congress, both of which are committed to the development of educational technology as a national resource.

The only justification for these rules offered by the Commission is to speed processing of its aging backlog of MDS applications. However, the Commission's administrative problems provide no justification for the adoption of rules which would impose de facto service areas on ITFS facilities and withdraw long-standing interference protection standards for ITFS stations. When balanced against the educational benefits of ITFS, the need to process MDS applications more quickly cannot be used to justify rules which would cripple ITFS operations.

The Commission's proposal to require MDS applicants to meet separation requirements with respect to existing co-channel and adjacent channel ITFS licensees would discard years of policy and

common sense without justification. There is a critical difference between ITFS and MDS service: MDS is designed to provide service to all locations within 15 miles of a transmitter, while ITFS only provides service to specified receive sites, many of which are further away from the transmitter than 15 miles.

Applying separation requirements for ITFS/MDS interference would be tantamount to adopting a "service area" approach for ITFS stations on co-channels and adjacent-channels to MDS applicants, a practice which the Commission has previously held inappropriate and detrimental for ITFS. The Commission should not discard the current engineering standard system which the Commission itself recognizes affords "a high degree of flexibility" in locating MDS stations. Based on the Commission's own pronouncements, and the sound public policy in not further impairing ITFS service, the proposed separation requirement rule for co-channel and adjacent-channel ITFS facilities should be rejected.

The Commission's proposal to limit to 30 days the time in which ITFS licensees may complain about interference into their systems from new co-channel and adjacent-channel MDS operations is absurd and inconsistent with retaining ITFS as a viable service.

The 30-day "complaint" period is simply unworkable. Even under the most optimistic conditions, it would be a nearly impossible task to assess interference at all receive sites of a moderate-sized ITFS facility within 30 days. Moreover, a 14-day notification period for commencement of service would not always provide sufficient time for transmittal of the MDS notice, and it

would be meaningless if the MDS station were scheduled to commence operation during the summer months or holiday seasons.

This proposal is also technically unsound. Each ITFS receive site is engineered for proper reception with regard to antenna size, elevation and surrounding terrain, which results in a consistent "desired" signal at the receive location. The paths for "undesired" signals, however, are not engineered at all; they simply exist as circumstances dictate. Obstructions, vegetation and climatic conditions may vary throughout the day and over the year as seasons change and substantially affect propagation. As a result, a site which may be interference free in summer may be subject to devastating interference during the fall or winter.

The proposal also does not offer sufficient protection from MDS interference to previously permitted or applied for, but as yet unconstructed, co-channel or adjacent-channel ITFS stations, and the Commission has provided no procedure for the interference "complaint" by the ITFS station.

The withdrawal of interference protection after the 30-day window could cripple ITFS operations. Under the proposed policy, interference protection for ITFS receive sites would be nonexistent after one month of MDS radiation, placing the effectiveness of ITFS transmissions at the mercy of MDS operators. Many affected receive sites may become unuseable, and students at those sites would no longer have the benefit of ITFS. All this would have an adverse impact on the provision of instructional programming by the affected ITFS stations.

The Commission's withdrawal of interference protection for ITFS stations essentially makes them secondary on the E-Channel and F-Channel groups to MDS operations. This represents a major, substantive policy change, directly contrary to the public interest findings in the 1983 reallocation plan, and directly contrary to the Commission's decision to grandfather these operations "in perpetuity."

As the Commission recognized in 1983, not disrupting existing ITFS operations is in the public interest. Now without a reasoned basis for changing its rules, the Commission has proposed to authorize disruption and hardship "in the public interest." Because of the burdens it would impose upon these stations, and because it would not serve the public interest, the Commission should not adopt the interference "protection" rules proposed in the Notice. The Commission should, rather, retain the requirement that MDS applicants engineer their facilities to prevent harmful interference into co-channel and adjacent-channel ITFS licensees.

With regard to other proposals, ITFS and MDS applications operations should be united under Part 74 of the Commission's Rules and in the Mass Media Bureau. Height of receive site antennas must be accounted for in separation and short-spacing tables; vertical spacing should be considered for colocation of adjacent-channel transmitters. It would be in the public interest to preclude settlements among MDS lottery groups.

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JOINT COMMENTS ON NOTICE OF PROPOSED RULE MAKING

Pursuant to Section 1.415 of the Commission's Rules, Indiana Higher Education Telecommunication System (IHETS), Northeastern University (Northeastern), and Trans Video Communications, Inc. (TVC), by their attorneys, submit these comments in the above-referenced docket in response to the Notice of Proposed Rule Making ("Notice"), FCC 92-173, released May 8, 1992.

I. AS LICENSEES OF ITFS STATIONS, IHETS, NORTHEASTERN AND TVC HAVE INTERESTS IN THIS PROCEEDING WHICH WOULD BE SERIOUSLY IMPAIRED BY ADOPTION OF THE PROPOSED RULES.

The parties submitting these comments, IHETS, Northeastern and TVC, are all licensed to operate ITFS stations for the provision of instructional programming in schools, colleges, universities, workplaces and communities in Indiana, Boston and Brooklyn, respectively. Each has held an ITFS license for over 20 years, and is well-known for its contributions to instructional television services.

IHETS is a consortium of public and private institutions of higher education in Indiana. IHETS provides various telecommunications network services which are shared by member institutions. The IHETS television networks transmit four channels of credit courses, noncredit courses and continuing education programs from five major college campuses to more than 250 receive sites, serving thousands of students at colleges, universities, other schools and industries in all 92 Indiana counties.

Network Northeastern is the ITFS system operated by Northeastern University. Northeastern transmits credit and noncredit courses in the arts and sciences, business administration and wellness education, engineering and engineering technology as well as complete graduate degree programs in electrical and computer engineering on a live, interactive basis to more than 2,000 students at its Boston campuses and at corporate sites throughout the area.

Trans Video Communications is owned by the Roman Catholic Diocese of Brooklyn, and provides services to approximately 70,000 students at over 200 schools in the Brooklyn/Queens area. TVC also provides service to hospitals, nursing homes and other schools in these communities. TVC is linked to 17 ITFS Catholic dioceses via CTNA and downlinked to 100 other dioceses.

As ITFS licensees, IHETS, Northeastern and TVC have an interest in this rulemaking because the Commission is proposing to change the rules which govern the relationship between existing ITFS stations and MDS applicants. There are two major changes

which are of particular concern. First, the Commission has proposed using separation requirements rather than an interference protection standard to determine the proximity of new MDS stations to existing co-channel and adjacent-channel ITFS licensees. The nature of ITFS service makes the use of such separation requirements impossible because ITFS receive sites must be located where need dictates rather than at set distances from the transmitter.

Second, the Commission has suggested an absurd 30-day limit on the interference protection which MDS conditional licensees would be required to provide existing, permitted and previously applied for ITFS stations. If adopted, this time limit would make it impossible for co-channel and adjacent-channel ITFS licensees to continue to serve many of their current receive sites, and would eventually result in cessation of such stations' operations.

These and other proposed changes would seriously impair the ability of IHETS, Northeastern and TVC to continue to provide instructional programming at their current levels of service, and indeed, may result in the cessation of at least a portion of their ITFS operations within a matter of months. Because such action by the Commission is contrary to its own policies, the education policies of the President and Congress, and the needs of the communities served by these ITFS facilities, IHETS, Northeastern and TVC submit these comments and request the Commission to protect ITFS and not to adopt the proposed MDS rules, as discussed further below.

II. ADOPTION OF THE PROPOSED RULES WOULD FURTHER DEGRADE ITFS SERVICE THROUGHOUT THE UNITED STATES AND PROVIDE NO IMPETUS FOR THE DEVELOPMENT OF WIRELESS CABLE SERVICE.

In the past two years, the Commission has undertaken a campaign apparently designed to promote MDS as a competitor to cable television. See Second Report and Order, 6 FCC Rcd 6792 (1991); Order on Reconsideration, 6 FCC Rcd 6764 (1991); Report and Order, 5 FCC Rcd 6410 (1990) ("Wireless Cable Service").^{1/} Despite the Commission's much ballyhooed attempt at playing Pygmalion, MDS has not yet gained the level of respectability which might merit such special attention.^{2/}

Indeed, the Commission itself has been forced to admit that despite its extraordinary efforts to promote MDS, "the competitive

^{1/} IHETS, Northeastern and TVC filed comments in each of the proceedings for which these orders were issued. See Joint Comments on Further Notice (filed Dec. 19, 1990); Joint Petition for Reconsideration (filed Dec. 3, 1990); Joint Comments (filed May 7, 1990), respectively.

^{2/} The Federal Trade Commission has recently brought several suits against MDS "application mills." On June 2, 1991, a preliminary injunction was issued in the action against Applied Telemedia Engineering and Management, Inc. in the Southern District of Florida. In this case, the FTC alleged that ATEAM misrepresented to consumers that by purchasing its application service, they were likely to obtain an MDS license which would allow them to own and operate a wireless cable system. 5 Trade Reg. Rep. (CCH), FTC Complaints and Orders ¶ 23,012 (announced June 9, 1991).

In a similar action against American Microtel, Inc. of Las Vegas, the FTC charged that the company made false representations concerning the worth of MDS systems and their ability to compete with CATV franchises. Id. ¶ 23,160 (announced March 9, 1992). Such MDS application services have also been investigated by state securities regulators in Alaska, Hawaii, Massachusetts, Michigan, Mississippi and Washington. Edmund L. Andrews, "Investing in New TV Field Brings Scrutiny," The New York Times, Sept. 2, 1991, at 1 (Business Day).

potential of wireless cable remains largely unrealized."^{3/}

Notice, ¶ 5.

There are sound economic reasons why MDS would have difficulty in direct competition with CATV.^{4/} Unfortunately, while attempting to ease the way for MDS, the Commission has continued to change its rules to the detriment of ITFS.

Meanwhile, these same rule changes have increased the financial and administrative burdens on ITFS licensees, and have made it increasingly difficult for them to provide much-needed instructional programming to schools, colleges and workplaces. Thus, ironically, during the term of the "education President"^{5/} and a Congress committed to the promotion of "distance learning,"^{6/} the Commission has followed a course of impeding

^{3/} The Commission has been trying to jumpstart MDS for the past ten years. See Multipoint Distribution Service (Technical Standards), 56 RR 2d 187 (1984); Instructional TV Fixed Service (MDS Reallocation), 94 FCC 2d 1203 (1983). Each successive attempt produces rules which make it increasingly difficult for ITFS licensees to operate their facilities. See comments cited supra note 1.

^{4/} It should be obvious that a 33-channel MDS system would not compete effectively with a CATV network offering more than twice that number of channels. A high failure rate among MDS licensees in constructing and operating and the Federal Trade Commission actions against MDS "application mills" suggest that, if at all, general implementation of wireless cable systems remains many years hence.

^{5/} In initiating the "America 2000" strategy, the President stated: "If we want America to remain a leader, a force for good in the world, we must lead the way in educational innovation." Address to the Nation on National Education Strategy (April 18, 1991); see also, e.g., Remarks at the Education Summit Welcoming Ceremony (Sept. 27, 1989).

^{6/} See Office of Technology Assessment, Linking for Learning: A New Course for Education (1989); Star Schools Program Assistance Act, Pub. L. No. 100-297, Title IX, 102 Stat. 320 (1988) (providing support for, inter alia, "telecommunica-

rather than developing the potential of ITFS as a national resource for American education and development.

With its latest Notice, the Commission has once again proposed to adopt rules which would ostensibly foster MDS, but which would in actuality harm ITFS. Once again, not only has the Commission ignored the impact of these proposals on ITFS, it has also ignored the fundamentals of administrative rulemaking and proposed rules with no foundation in fact or policy. Accordingly, IHETS, Northeastern and TVC urge the Commission to reject this course and rules which would seriously impair the usefulness of ITFS.

III. THE VALUE OF ITFS OUTWEIGHS ANY PUTATIVE BENEFIT THOUGHT TO RESULT FROM ADOPTION OF RULES DESIGNED TO PROCESS MDS APPLICATIONS MORE QUICKLY.

The sole basis identified for the proposals in the Notice is the fact that the Commission has a "large and aging backlog" of MDS applications. Notice, ¶ 5. The Commission's administrative problems provide no justification for the adoption of rules which would, inter alia, withdraw long-standing interference protection standards for ITFS stations. In any event, when balanced against the importance of ITFS service to the educational needs of the United States, the proposed rules run contrary to, rather than support, the public interest.

tions equipment capable of serving a wide geographic area").

A. ITFS Is a Valuable National Educational Resource.

The Commission itself has long recognized "the significant role that ITFS can play in providing improved educational opportunities for all." Notice of Proposed Rule Making and Notice of Inquiry, 5 FCC Rcd 971, 971, ¶ 5 (1990); see also Educational Television, 39 FCC 846 (1963). It is readily apparent from the successes of ITFS that the benefit of maintaining ITFS service for American educational systems outweighs any putative harm which the Commission guesses might arise from a backlog of MDS applications, -- many of which may in fact be speculative.

Throughout the United States, ITFS systems are growing at a rapid pace; more than 700 ITFS systems have commenced service on more than 2,000 channels since the authorization of ITFS.^{7/} Nearly one-third of the States -- including, for example, Indiana, South Carolina, Wisconsin, Maine, and Hawaii -- have developed or are developing statewide ITFS systems.^{8/} These systems represent an enormous investment of public funds and educational resources to benefit the public and national interest in improved instruction.

ITFS provides innovative and important methods for transmitting instructional, educational and cultural programming:

Improved Learning Potential. Unlike educational broadcast channels, each ITFS channel is associated with a "talk-back" frequency which allows students and teachers to communicate

^{7/} See Linking for Learning, *supra*, at 62.

^{8/} See *id.* at Appendix A.

directly during instruction, thereby improving the potential for learning.

Preservation of Localism. Because the Commission favors licensing local educators on ITFS channels, ITFS stations concentrate on the needs of the community. Many ITFS systems transmit state-required courses. And, ITFS helps preserve local public education, one of the basic tenets of American education.

Access to Diversity. At the same time, because ITFS provides "distance learning" from a central location to many receive sites, students in even the most rural schools can enjoy the benefits of a larger education system. Teaching staffs can be increased, courses diversified, and costs contained through linkage to an ITFS network.

Continuing Education. ITFS systems serve the dual purposes of educating America's youth in primary, secondary and college classrooms as well as training, retraining and combating technical obsolescence among, for example, engineers, doctors and other employees in the workplace. As our Nation faces more competition from abroad in the rapidly growing and profitable high tech industries, it can ill afford to lose any of the benefits provided by ITFS.

The benefits arising from ITFS are threatened by the withdrawal of interference protection simply to facilitate processing of MDS applications. Despite the Commission's oft-repeated promises to protect ITFS,^{9/} it appears now that the

^{9/} See, e.g., Notice, ¶ 5 (current proposals were designed to expedite MDS processing "while at the same time honoring our commitment to safeguard the operations of ITFS licensees");

greatest threat to the continued viability of ITFS as an educational resource is the Commission itself and its attempt to promote MDS. The Commission nonetheless touts its efforts to "creat[e] new platforms for quality education through 'tele-education' or 'distance-learning,'" Report of the FCC Regarding the President's Regulatory Reform Program, at 1 (April 28, 1992), when it, in fact, is sub rosa dismantling ITFS.

B. A Backlog of Applications Provides No Basis to Eliminate ITFS Interference Protection.

There is no justification for the Commission to endanger ITFS because of its own inability to process its backlog of MDS applications, many of which may well be submitted by speculators. First, in promulgating the new rules, the Commission has simply ignored the obvious fact that the backlog of MDS applications arises from (1) the Commission's own failed policies governing applications for MDS, which have allowed application mills to abuse the Commission's processes, and (2) lack of staff resources to handle the number and type of applications which the Commission opted to promote. The true reasons for the Commission's proposals afford no basis for the Commission to change MDS rules to the detriment of ITFS service.

Second, as the Commission itself points out, the backlog of MDS applications dates from 1980 and 1983 filing periods. Notice,

Notice of Proposed Rule Making and Notice of Inquiry, 5 FCC Rcd 971, 971, ¶ 5 (1990) (in proposing rules to promote MDS, Commission states that it does not "intend to jeopardize the current or future ability of ITFS to fulfill its educational potential").

¶ 5. Since that time, there have been at least five major Commission rulemaking proceedings involving MDS,^{10/} and in none did the Commission find that elimination of engineered interference protection was needed to process MDS applications more quickly. Now, suddenly, without explanation, the Commission has decided that eliminating MDS engineering analyses for existing ITFS stations will help it process MDS applications which have been pending for more than a decade.

Such a major change in interference protection for ITFS is inconsistent with the Commission's long-standing ITFS policies. Moreover, less than two years ago, the Commission found that the current standards for interference protection for ITFS and MDS promoted the public interest. Wireless Cable Service, 5 FCC Rcd at 6419, ¶ 59-61. Now in its third major rulemaking notice for MDS in three years, the Commission appears to be changing its rules willy-nilly without thinking about a reasoned path to its goals.^{11/}

10/ See Report and Order, 94 FCC 2d 1203 (1983); First Report and Order, 56 RR 2d 187 (1984); Report and Order, 2 FCC Rcd 4251 (1987); Report and Order, 5 FCC Rcd 6410 (1990); Second Report and Order, 6 FCC Rcd 6792 (1991).

11/ Even if the proposed rules were to resolve the backlog of MDS applications, there could be no rational basis for their adoption. The proposed rules are designed to provide a solution for a short-term problem -- processing MDS applications. However, the rules would impose long-term detrimental effects on ITFS licensees by withdrawing the right to interference protection after 30 days of operation by the MDS licensees. Thus, the detrimental impact of the proposals goes far beyond any short-term benefit which may be obtained from their adoption. Moreover, any short-term benefit would not justify withdrawing from ITFS the Commission's general policy of protecting existing stations from newcomers, which in essence makes ITFS operations secondary to MDS.

Were the Commission to really think about improving its MDS processing rules, it could find numerous solutions, none of which threaten ITFS. For example, a simple and expedient method to ensure that only serious (and consequently fewer) applicants apply for MDS stations would have been to raise the filing fee (now \$155.00). The proceeds from the higher fees could have been used to expand the Commission's resources for processing MDS applications.

The Commission could also have adopted stricter standards to deal with abuse of its MDS application procedures thereby eliminating from consideration many MDS applicants. Under the current regime, however, the Commission's generous policies have permitted a relaxed standard for adherence to the real-party-in-interest (47 C.F.R. § 21.13(a)) and one-to-a-market (47 C.F.R. § 21.901(d)(2)) rules. See, e.g., Presco Corporation, DA 92-732 (June 12, 1992) (rejecting petitions to deny "cookie-cutter" MDS applications); Virginia Communications, Inc., 2 FCC Rcd 1895 (1987) (same); Sherry Rullman & Edna Cornaggia, 2 FCC Rcd 2011 (1987) (same).^{12/}

Either one of these alternatives would have cut down enormously on the number of MDS applications and the problems of processing them. More importantly, neither of these solutions would have required changing the interference protection standards

^{12/} Additional examples, like MDS applicants, are legion. See, e.g., Thomas Glab, 5 FCC Rcd 516 (1990); Jody Barnes, 5 FCC Rcd 2026 (1990); Jody Barnes, 5 FCC Rcd 2029 (1990); Stephanie Engstrom, 5 FCC Rcd 2032 (1990); Stephanie Engstrom, 5 FCC Rcd 2035 (1990); Steven Rullman, 5 FCC Rcd 2038 (1990); Warren Ache, 5 FCC Rcd 2041 (1990); Stephen Communications, Inc., 5 FCC Rcd 2044 (1990).

for ITFS. The failure to provide a reasoned basis or to consider more effective alternatives make adoption of the proposed Section 21.902 invalid as a matter of law.

IV. USE OF SEPARATION STANDARDS BETWEEN EXISTING ITFS STATIONS AND MDS APPLICANTS CANNOT BE JUSTIFIED BY THE COMMISSION.

Based on an undocumented perception that electrical interference analyses slow the processing of MDS applications, the Commission has proposed to institute separation requirements between existing and previously-applied for MDS stations. Notice, ¶ 12. Moreover, without any expressed justification, the Commission is also considering requiring MDS applicants to meet these separation requirements with respect to ITFS licensees. Notice, ¶ 15. Through use of these separation requirements, the Commission proposes to eliminate the existing requirement that MDS applicants engineer their stations to protect existing and previously applied-for co-channel and adjacent-channel MDS and ITFS stations.

Eliminating the use of interference analyses to determine the proximity of proposed MDS stations to existing and previously applied for ITFS stations under Section 21.902 of the Commission's Rules would discard years of policy and common sense without justification. Because responsibility for interference problems would be shifted from new MDS stations to existing ITFS operators, this policy change would impose additional administrative and financial burdens on ITFS facilities. Moreover, such a change would seriously impair the ability of ITFS licensees to provide instructional programming to all parts of the communities they

serve and to plan for any expansion of their systems to provide for future educational needs.

The Commission has recognized on numerous occasions that ITFS licensees, as valuable educational resources, are entitled to interference protection. Accordingly, the Commission should not now endanger this resource, and should adhere to its current rules requiring proposed MDS stations to engineer their stations to protect existing ITFS facilities from harmful interference.

A. Interference Protection From MDS Applicants Must Be Provided at Each ITFS Receive Site.

The Commission's proposed MDS separation requirements are designed to provide each MDS applicant with a service area equivalent to the 15-mile radius of protected service to which it would be entitled under the current interference protection standard. See Notice, ¶ 12 nn. 20, 24; 47 C.F.R. § 21.902(b). The rules would not, however, ensure current protection from new MDS stations for existing co-channel and adjacent-channel ITFS stations.

Currently, an MDS applicant must protect each co-channel and adjacent-channel ITFS station within a 50-mile radius from specified levels of harmful interference at the ITFS station's receive sites. 47 C.F.R. § 21.902(i). The critical difference in interference protection standards for existing ITFS and MDS stations arises from the basic distinction between ITFS and MDS service: MDS is designed to provide service to all locations within 15 miles of its transmitter, while ITFS only provides

service to specified receive sites, many of which are further away from the transmitter than 15 miles.

The Commission has now proposed to discard engineered protection from MDS for ITFS receive sites, and require MDS applicants to satisfy the MDS separation requirements with respect to all existing co-channel and adjacent channel ITFS licensees.^{13/} Applying separation requirements for ITFS/MDS interference would be tantamount to adopting a "service area" approach for ITFS stations on co-channels and adjacent-channels to MDS applicants, a practice which the Commission has previously held inappropriate and detrimental for ITFS.

1. The Character of ITFS Precludes Use of Separation Requirements.

The Commission is on record as finding that the character of ITFS makes impossible the approach outlined in the Notice:

^{13/} The Commission indicates that it is "considering" requiring MDS applicants to provide co-channel ITFS receive sites with interference protection at 45 dB of desired to undesired signal ratio, and adjacent-channel receive sites at 0 or 10 dB, as appropriate, of desired to undesired signal ratio "as part of our ongoing commitment to the development of ITFS as an effective source of the distribution of educational material." Notice, ¶ 15. Because ITFS licensees are already entitled to such protection, adopting this proposal would not demonstrate any great "commitment" to ITFS on the part of the Commission.

Moreover, as discussed below, the absurd conditions under which such protection would be provided, see Notice, ¶ 15 n. 29, make this proposal useless for the protection of ITFS. The receive site protection would only be in effect for 30 days; thus, the Commission's proposal is in essence to provide the same separation requirement for existing ITFS stations as existing MDS stations, which makes no sense given the difference in purpose of the two services.

We agree that the nature of a typical ITFS operation is different from the typical MDS operation in that an ITFS operator frequently must provide service to certain sites regardless of the engineering difficulties involved whereas an MDS operator will rarely make extraordinary efforts to reach difficult or remote locations. . . .

Because of these considerations, we do not think it is appropriate to adopt specific service area boundaries for ITFS operators. We believe that it is in the best interest of that service to continue to allow ITFS operators to engineer their facilities to serve to all sites they have traditionally served regardless of location and to protect all such locations. . . .

Multipoint Distribution Service, 56 RR 2d 187, 203 (1984).

Furthermore, less than two years ago, the Commission reiterated that the character of ITFS required it to retain the current ITFS interference protection standard:

The current interference protection standards for both MDS and ITFS will not be changed. . . . [A] protected service area is fundamentally incompatible with the specific purpose and unique needs of ITFS. The educational mission of an ITFS station often requires transmission to sites in excess of 15 miles from the transmitter, and these sites must be protected consistent with the spectrum allocation.

Wireless Cable Service, 5 FCC Rcd at 6419, ¶ 59.

The Commission has offered no findings in the latest Notice with regard to ITFS facilities which would justify institution of a de facto service area for ITFS licensees. Indeed, there has been no change in the character of ITFS since the Commission made these findings. Revising the current procedures for providing ITFS interference protection would be flatly inconsistent with the nature of ITFS, as the Commission recognized just two years ago.

2. Requiring Protection at Each Receive Site Benefits the ITFS Facility and MDS Applicant.

The Commission has, in the past, also recognized that there are benefits to interference protection standards which are not achieved by a service area standard:

The receive site protection standard for ITFS stations can benefit . . . MDS operations. While some ITFS stations may be entitled to protection beyond 15 miles in some directions, they are often entitled to protection at locations less than fifteen miles from their transmitter in other directions. Consequently, an MDS station may be able to propose operation that will meet our interference criteria from a location closer to an ITFS station than might be permitted if the ITFS station were entitled to protection for fifteen miles in all directions.

Wireless Cable Service, 5 FCC Rcd at 6419, ¶ 60.^{14/} Obviously, these circumstances have not changed; MDS and ITFS are not alike, and should not be treated similarly by new MDS applicants. The Commission should not discard a system which the Commission itself recognizes affords "a high degree of flexibility" in designing MDS stations. Notice, ¶ 12.

B. Perceived Application Processing Problems Cannot Justify Withdrawal of ITFS Protection.

The only rationale the Commission has offered for changing its current MDS interference protection rules is the undocumented "belief" that existing interference criteria slow application

^{14/} The Commission has recognized that the same reasoning applies to MDS applicants' protection for existing MDS stations: "We also believe that the size of the protected service area really has very little to do with how close stations can be located to each other." Multipoint Distribution Service, 56 RR 2d at 201. Use of separation requirements would make more difficult the design of multiple MDS stations in closely-spaced communities.

processing. Notice, ¶ 12. The Commission has not even made a finding that switching from MDS interference protection standards to MDS separation requirements would solve the perceived problem: "it is possible that the processing of MDS applications could be expedited by modifying the interference protection criteria currently contained in [the Commission's Rules]." Notice, ¶ 12.

It is a fundamental requirement of administrative rulemaking that adoption of agency rules be accompanied by "a concise general statement of their basis and purpose." 5 U.S.C. § 553(c); see, e.g., Reeder v. FCC, 865 F.2d 1298, 1305-06 (D.C. Cir. 1989). The Commission has stated no basis for changing the ITFS protection requirements in Section 21.902, and has provided no supportable basis for the disruption to ITFS service which the change in interference protection would wreak. Based on the Commission's own pronouncements, and the sound public policy in not further impairing ITFS service, the proposed separation requirement rule for co- and adjacent-channel ITFS facilities should be rejected.

V. THE COMMISSION SHOULD REJECT ITS PROPOSED INTERFERENCE COMPLAINT PROCEDURE AS UNWORKABLE, IRRATIONAL, UNNECESSARY AND CONTRARY TO LONG-STANDING PROTECTIONS AFFORDED ITFS.

The Commission's proposal to limit to 30 days the time in which ITFS licensees may complain about interference into their systems from new co-channel and adjacent-channel MDS operations is absurd, totally unjustifiable, and inconsistent with retaining ITFS as a viable service. See Notice, ¶ 15 n.29. Indeed, it is the consensus of IHETS, Northeastern and TVC that adoption of such

a rule would cause the cessation of operations on affected systems within a relatively short period of time.

That the Commission would even propose such rules demonstrates either that it has intentionally abandoned ITFS or that it does not understand the technology employed for ITFS and MDS operations. No matter what the reason, the present Notice is a major disappointment to the Joint Commenters in that the Commission has shown so little regard for ITFS.

A. The Mechanics of the Proposal Are Not Feasible.

Under the Commission's proposal, as a condition for receiving a license, each new MDS station would be required to notify any co-channel or adjacent-channel ITFS licensee 14 days prior to the commencement of MDS operations. The ITFS licensee would then have 30 days in which to "complain" of harmful interference. "If no interference occurs to the ITFS operator, or if the ITFS operator fails to complain, the MDS license would become unconditional with respect to the need to protect ITFS co- and adjacent channel licensees after 30 days of continuous on-air operation." Notice, ¶ 15 n.29.

If there were interference, the Commission "could require the MDS operator to cease operating immediately without a hearing," and require the MDS operator "to reduce its signal to the required levels, as measured at the output terminals of the ITFS receive antenna." Id. The burden of going forward with evidence demonstrating interference would rest initially with the ITFS operator, and then shift to the MDS permittee. Id.